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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LA VERNE R. VAUGHN, Plaintiff and Appellant, v. TOYOTA OF NORTH HOLLYWOOD, et al., Defendants and Respondents.	B169988 (Los Angeles County Super. Ct. No. BC 266545)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rodney E. Nelson, Judge. Affirmed.

Robert E. Stroud & Associates and Robert E. Stroud for Plaintiff and Appellant.

Molino & Associates and Steven R. Berardino for Defendant and Respondent Toyota of North Hollywood.

Law Offices of Ronald M. Takehara and Ronald M. Takehara for Defendant and Respondent Toyota Motor Credit Corporation.

Andrei Sotnikov leased an automobile from Toyota of North Hollywood (TNH). A few days after the lease was executed, TNH transferred the lease to Toyota Motor Credit Corporation (TMCC). Over a year later, while driving the leased car, Sotnikov collided with a car occupied by LaVerne Vaughn (Vaughn) and her mother Ruth Vaughn, injuring Vaughn and killing her mother. Vaughn sued Sotnikov, TNH, and TMCC for negligence, personal injuries, wrongful death, property damage, and punitive damages.[1] Vaughn sued TNH and TMCC under a negligent entrustment theory.

TNH and TMCC sought and obtained summary judgment, arguing as a matter of law they did not commit negligent entrustment. TMCC also argued it was not involved in the leasing decision, and that statutes limited its liability for the accident to $15,000 per person and $30,000 per accident.

Vaughn appeals, contending (I) the trial court erred in so finding.[2] Vaughn also contends (II) the trial court erred in shifting the burden to her, providing an inadequate statement of decision, and in not ruling on the parties' objections to evidence.

We reject Vaughn's first contention and affirm the judgment. Because of our ruling we need not address Vaughn's second contention.

FACTS

On June 10, 2000, Sotnikov leased a 2001 Toyota Corolla from TNH. As part of the lease application, Sotnikov listed California work and home addresses. However, Sotnikov produced a facially valid Florida driver's license.[3] TNH did not inquire

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1 Vaughn originally and incorrectly sued Toyota Lease Trust as the entity which took over the lease. TMCC is the correct entity.

2 Sotnikov is not a party to this appeal.

3 Sotnikov's Florida license did not expire for several more years and the record contains no evidence that Florida suspended or revoked it. Vaughn argues, as discussed below, that when Sotnikov became a California resident, California required him to obtain a California driver's license to legally drive in California. If so, Sotnikov's still valid Florida license no longer legally authorized him to drive here.

whether Sotnikov had a California driver's license, accepting the Florida license. The lease required Sotnikov to maintain automobile liability insurance for the car. A few days after Sotnikov leased the car, TNH transferred the lease to TMCC.

Unbeknownst to TNH or TMCC, Sotnikov also had a California driver's license. On April 30, 2000, 42 days before the lease, Sotnikov drove his other car into a single-vehicle traffic accident, damaging it and injuring himself and his passengers (his wife and son). The police report opined that Sotnikov caused the accident by driving under the influence of alcohol. Sotnikov received an Administrative Per Se Suspension/Revocation order and temporary license. According to the order, Sotnikov did not have his permanent California driver's license in his possession at the time of the accident; he produced his Florida license. As a result, on May 18, 2000, the Department of Motor Vehicles (DMV) sent Sotnikov an order suspending his California driver's license from June 21-October 20, 2000, "and until [he] file[d] proof of financial responsibility." When Sotnikov leased the car from TNH, he possessed the temporary California driver's license he received on April 30, 2000.

After Sotnikov leased the Toyota from TNH, DMV took further action based on the April 30, 2000, accident. On March 1, 2001, DMV sent Sotnikov an order revoking his California driver's license effective April 4, 2001. In a May 24, 2001, order issued after a hearing at which Sotnikov did not appear, DMV sustained its earlier revocation of Sotnikov's California driver's license. The May 24, 2001, DMV order stated that Sotnikov's "driving privilege remains revoked."

On July 5, 2001, Sotnikov, while driving the leased Toyota, crossed over a painted center divider and collided head-on with a car containing Vaughn and her mother. The collision injured Vaughn and killed her mother. Sotnikov had no auto insurance on July 5, 2001. The police report prepared regarding the accident opined that Sotnikov was driving under the influence of alcohol. Breath tests taken shortly after the collision

disclosed that Sotnikov had a .14% blood alcohol level. Vaughn received the maximum uninsured motorist payment, $15,000 per person/$30,000 per incident, from her insurer.

The trial court granted TNH and TMCC summary judgment on several grounds, including that there was no negligent entrustment as a matter of law.

DISCUSSION

Vaughn contends the trial court erred in finding TNH and TMCC did not commit negligent entrustment as a matter of law and thus granting them summary judgment. As clarified in her reply brief, Vaughn concedes Sotnikov had a valid Florida driver's license when he leased the Toyota from TNH. Vaughn also concedes TNH and TMCC "had no duty to inquire to . . . DMV . . . whether Sotnikov had a valid driver's license when [TNH] leased its vehicle to Sotnikov." Vaughn's "position is . . . that TNH should have required Sotnikov to produce a valid California driver's license because Sotnikov was a California resident. When Sotnikov failed to produce a valid California driver's license, then TNH had a duty to make further inquiry. . . . Under these circumstances, a triable issue of fact exists whether [TNH and TMCC] negligently entrusted their vehicle." Vaughn argues that Sotnikov's Florida license, while still valid, no longer authorized him to drive in California because, having become a California resident, he had to obtain (as he did) a California license.[4]

TNH and TMCC respond that, on these facts, when Sotnikov produced his valid Florida driver's license, they (1) had satisfied whatever inquiry duty they had, (2) had no duty to inquire further, and (3) deserved summary judgment.

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4 "An express concession or assertion in a brief is frequently treated as an *admission* of a legal or factual point, controlling in the disposition of the case. [Citations.]" (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 597, p. 631; *El Rancho Unified School Dist.* v. *National Education Assn.* (1983) 33 Cal.3d 946, 951, fn. 7.)

We agree with TNH and TMCC. Vaughn's contention lacks merit.[5]

The parties correctly agree that we review summary judgments de novo. (Code Civ. Proc., § 437c, subds. (b), (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843-855; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767-768.) Of particular relevance here, we are not bound by the trial court's stated reasons, if any, for its ruling; we review the ruling, not the rationale. (*Jacoves* v. *United Merchandising Corp.* (1992) 9 Cal.App.4th 88, 102; *Stratton* v. *First Nat. Life Ins. Co.* (1989) 210 Cal.App.3d 1071, 1087.) Moreover, where the trial court's failure to state reasons for its summary judgment grant does not hamper our review of the summary judgment, that failure does not require reversal. (*Goldrich* v. *Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 782; see, e.g., *W. F. Hayward Co.* v. *Transamerica Ins. Co.* (1993) 16 Cal.App.4th 1101, 1110-1111.)

This case involves an alleged negligent entrustment of a vehicle. (See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 999, pp. 389-390; *id*. (2004 supp.), §§ 999A-999B, pp. 292-294.) Inserting the names of the relevant parties into a standard jury instruction, Vaughn's negligent entrustment cause of action would read as follows: "Vaughn claims that she was harmed because TNH and TMCC negligently permitted Sotnikov to use TNH's and TMCC's vehicle. To establish this claim, Vaughn must prove all of the following:

"1. That Sotnikov was negligent in operating the vehicle;

"2. That TNH and TMCC w[ere] . . . owner[s] of the vehicle operated by Sotnikov;

"3. That TNH and TMCC knew, or should have known, that Sotnikov was incompetent or unfit to drive the vehicle;

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5 We assume without deciding, as Vaughn alleged, that TNH and TMCC were both principles to, or each other's agents for, the lease with Sotnikov.

"4. That TNH and TMCC permitted Sotnikov to use the vehicle; and

"5. That Sotnikov's incompetence or unfitness to drive was a substantial factor in causing harm to Vaughn." (CACI No. 724 (July 2004 ed.); see BAJI No. 13.80 (July 2004 ed.).)

Here, we deal with the third element of Vaughn's negligent entrustment cause of action. Vaughn contends TNH and TMCC had a duty to require Sotnikov to produce a valid California license because his lease application, listing California residence and employment addresses, suggested he resided in California. Had he been unable to do so, Vaughn argues, TNH and TMCC would have been required to inquire further of Sotnikov.

Several Vehicle Code sections affect TNH's and TMCC's liability, if any, on these facts.[6] "(a) No owner of a motor vehicle may knowingly allow another person to drive the vehicle upon a highway unless the owner determines that the person possesses a valid driver's license that authorizes the person to operate the vehicle. For the purposes of this section, an owner is required *only to make a reasonable effort or inquiry to determine whether the prospective driver possesses a valid driver's license before allowing him or her to operate the owner's vehicle. An owner is not required to inquire of [DMV] whether the prospective driver possesses a valid driver's license*.

"(b) A *rental company* is deemed to be in compliance with subdivision (a) if the company rents the vehicle in accordance with Sections 14608 and 14609." (§ 14604, italics added.)

"No person shall employ or hire any person to drive a motor vehicle *nor shall he knowingly permit or authorize the driving of a motor vehicle, owned by him or her or under his or her control*, upon the highways by any person unless the person is then

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6 All further undesignated section references are to the Vehicle Code.

licensed for the appropriate class of vehicle to be driven." (§ 14606, subd. (a), italics added.)

Sections 14608 and 14609 govern rental car companies' relevant obligations. As relevant to our facts, section 14608 provides: "No person shall rent a motor vehicle to another unless:

"(a) The person to whom the vehicle is rented is licensed *under this code or is a nonresident who is licensed under the laws of the state or country of his or her residence*.

"(b) The person renting to another person has inspected the driver's license of the person to whom the vehicle is to be rented and compared the signature thereon with the signature of that person written in his or her presence. [¶] . . . ." (Italics added.)

Section 14609, subdivision (a), states: "Every person renting a motor vehicle to another person shall keep a record of the registration number of the motor vehicle rented, the name and address of the person to whom the vehicle is rented, *his or her driver's license number, the jurisdiction that issued the driver's license, and the expiration date of the driver's license*." (Italics added.)

Finally, Civil Code section 2989.4, subdivision (a)(3), part of the Vehicle Leasing Act, states: "(a) A lessor shall not: [¶] . . . [¶] (3) Refuse to lease a vehicle to any creditworthy person at the advertised total price, exclusive of sales tax, vehicle registration fees and finance charges."

Several cases have applied these sections in similar if not identical situations. In *Dodge Center v. Superior Court* (1988) 199 Cal.App.3d 332, Adams, the driver of a car that later injured plaintiffs in a collision, bought the car from Dodge Center, which kept a security interest in the car which it transferred to a bank a few days later. When Adams bought the car, his California driver's license had expired without renewal a few years before. In the interim, DMV suspended his California driver's license for several Vehicle Code violations and failures to appear. However, "Adams . . . told Dodge employees he

had a license, reciting the number from memory when it was needed to fill in the purchase forms, but he did not produce one for inspection." (*Id*. at p. 335.) Adams displayed no evidence of intoxication or driving incompetence at the time of the sale. Among other defendants, plaintiffs sued Dodge Center on a negligent entrustment theory and obtained a partial summary adjudication. Dodge Center petitioned for a writ of mandamus to vacate that order and compel summary adjudication in its favor. The appellate court granted the petition and ordered the trial court to grant Dodge Center summary judgment. (*Id*. at p. 343.)

The case held that "[s]ection 14606, like the common law cause of action for entrustment, requires a showing of knowledge of the incapacitating condition, which under the statute is lack of a license. In the absence of such knowledge there is no duty to inquire. [Citation.] Here, . . . no evidence is offered tending to show that Dodge, through any of its employees, knew or should have known of any facts suggesting either that Adams had no license or that he was not a competent driver. Accordingly, the proof falls short of establishing, even for summary judgment purposes, that there are triable issues of fact as to whether Dodge violated the statute or incurred common law liability for negligent entrustment." (*Dodge Center v. Superior Court*, *supra*, 199 Cal.App.3d at p. 338.) The case also suggested it was unlikely "that a *sales* transaction can give rise to either of the above types of liability, statutory or common law. No statute makes it unlawful for a motor vehicle retailer to sell to an unlicensed driver. Similarly no statute imposes on such a retailer a duty to inquire as to the purchaser's license status. In contrast, a specific statute imposes such a duty on one who rents a motor vehicle, requiring inspection of the driver's license of the person to whom the vehicle is to be rented and comparison of the signature on the license with that of the person seeking to rent. (§ 14608.)" (*Id*. at pp. 338-339.) The case went on to reject cases suggesting there could be such liability in the sales context, even where the seller retains a security

interest. (*Id*. at pp. 339-341.) Finally, the case noted that a plaintiff must show "actual knowledge of facts showing or suggesting the driver's incompetence -- not merely his lack of a license." (*Id*. at p. 341.) Plaintiffs failed to produce any such evidence. The court "conclude[d] that Dodge owed no legal duty to plaintiffs to inquire into Adam's driving record before selling him a vehicle." (*Id*. at p. 342.)

Vaughn tries to distinguish *Dodge Center* because Sotnikov leased rather than bought the Toyota from TNH. We find that distinction unpersuasive. As TNH and TMCC note, a lease is closer to a sale, particularly where the seller retains a security interest, than to a rental, where, as *Dodge Center* noted, there is a higher inquiry duty imposed by statute.

In any event, even if an auto lease is analogized to a car rental, with an admittedly higher statutorily-imposed inquiry duty, Vaughn's contention has been rejected on similar facts. In *Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703, Ege rented a car from Hertz. Ege showed a valid California driver's license when he rented the car, and appeared sober and displayed no other evidence of driving incompetence. Ege did not disclose, and Hertz did not inquire about, Ege's previous two drunk driving convictions, the most recent of which was seven years old, or the fact that his license had been suspended once. Ege's license apparently had been reinstated and was valid when he rented the car. Ege crashed the car while drunk, injuring his passenger, who sued Hertz under a negligent entrustment theory, arguing Hertz should have inquired further about Ege's driving record. The trial court granted Hertz summary judgment, and *Osborn* affirmed. (*Id*. at p. 706.)

Osborn rejected the plaintiff's arguments that Hertz should have inquired about Ege's driving record, and should have warned him of the dangers of drunk driving. (*Osborn v. Hertz Corp., supra,* 205 Cal.App.3d at pp. 709-714.)

Recently, Division Six of our District followed *Osborn*, affirming a summary judgment for a rental car company against a negligent entrustment lawsuit. The company rented a car to a British traveler who showed a valid British driver's license without inquiring about the traveler's familiarity with California driving rules or giving him a copy of our Vehicle Code. The traveler, while driving the rented car, injured plaintiffs in a crash allegedly caused by the traveler's unfamiliarity with California driving rules. (*Lindstrom v. Hertz Corp.* (2000) 81 Cal.App.4th 644, 646-647, 648-651.)

Taken together, these cases compel us to affirm the summary judgment. Vaughn argues the alleged incongruity between Sotnikov's valid Florida license and his California work and residence addresses in the lease application created a duty on TNH to ask Sotnikov whether he had a California driver's license and require him to produce it. If leasing is analogized to sales, there was no duty of inquiry at all. Even if leasing is analogized to renting, Sotnikov produced a valid license. TNH was under no duty to inquire further. The alleged incongruity here is no greater than that in *Lindstrom*, where the rental company was not required to inquire further than to see a facially valid license.

Nothing in *Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, on which Vaughn relies, compels a contrary result. *Smith* analyzed statutes governing return of impounded cars seized by police from negligent non-owner drivers to the cars' registered owners. *Smith's* discussion of the various statutes penalizing unlicensed driving, and their underlying public policy, does not contradict, and cannot trump, another set of statutes designed to limit car sellers' and renters' negligent entrustment liability where, as here, the allegedly unfit driver shows a valid license and displays no evidence of driving incompetence when he buys, rents, or, as here, leases a car.

Finally, we note that here, the undisputed evidence discloses that Sotnikov did not have his California driver's license with him at the April 30, 2000, crash. Thus, it could not have been seized by the officers who cited him for drunk driving, and he was

therefore capable of producing it when he leased the Toyota on June 10, 2000. Moreover, although DMV was in the process of suspending Sotnikov's California driver's license when he leased the Toyota, the May 18, 2000, suspension notice stated the suspension did not become effective until June 21, 2000. Thus, even if TNH had asked Sotnikov if he had a valid California driver's license, he reasonably could have answered, "yes," and produced it, on June 10, 2000.

For these reasons, the trial court properly granted TNH and TMCC summary judgment. Because of our conclusion, we need not address TNH's and TMCC's other arguments supporting the judgment, nor Vaughn's other claims of error.

Finally, although TNH reserved its right to seek sanctions for a frivolous appeal, TNH did not so move before oral argument, thus waiving that issue. In any event, we would have denied sanctions.

DISPOSITION

We affirm the judgment. TNH and TMCC are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ORTEGA, Acting P.J.

We concur:

VOGEL, J.

MALLANO, J.